

STATE PERSONNEL BOARD CALENDAR



AUGUST 12, 2004

SACRAMENTO, CALIFORNIA

State of California

Memorandum

DATE: July 30, 2004

TO: ALL INTERESTED PARTIES

FROM: STATE PERSONNEL BOARD -- Appeals Division

SUBJECT: Notice and Agenda for the August 12, 2004, meeting of the State Personnel Board.

PLEASE TAKE NOTICE that on August 12, 2004, at the offices of the State Personnel Board, located at 801 Capitol Mall, Room 150, Sacramento, California, the State Personnel Board will hold its regularly scheduled meeting. Pursuant to Government Code section 11123, there will be a teleconference location for this meeting at 320 W. 4th Street, Los Angeles, CA.

The attached Agenda provides a brief description of each item to be considered and lists the date and approximate time for discussion of the item.

Also noted is whether the item will be considered in closed or public session. Closed sessions are closed to members of the public. All discussions held in public sessions are open to those interested in attending. Interested members of the public who wish to address the Board on a public session item may request the opportunity to do so both at the 801 Capital Mall, Sacramento and 320 West 4th Street, Los Angeles, California locations.

Should you wish to obtain a copy of any of the items considered in the public sessions for the August 12, 2004, meeting, please contact staff in the Secretariat's Office, State Personnel Board, 801 Capitol Mall, MS 22, Sacramento, CA 95814 or by calling (916) 653-0429 or TDD (916) 654-2360, or the Internet at:

<http://www.spb.ca.gov/calendar.htm>

Notice and Agenda
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July 30, 2004

Should you have any questions regarding this Notice and Agenda, please contact staff in the Secretariat's Office at the address or telephone numbers above.

TAMARA LACEY
Secretariat's Office

Attachment

CALIFORNIA STATE PERSONNEL BOARD MEETING*
801 Capitol Mall
Sacramento, California

Public Session Location - 801 Capitol Mall
Sacramento, California, Room 150
Teleconference – 320 West 4th Street
Los Angeles, CA, Suite 620

Closed Session Location - 801 Capitol Mall
Sacramento, California Room 141
Teleconference - 320 West 4th Street
Los Angeles, CA, Suite 620

FULL BOARD MEETING AGENDA**

AUGUST 12, 2004

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

9:00 - 9:30

1. ROLL CALL

2. REPORT OF THE EXECUTIVE OFFICER

Report of Laura Aguilera
Assistant Executive Officer
State Personnel Board

3. REPORT OF THE CHIEF COUNSEL

* Sign Language Interpreter will be provided for Board Meeting upon request – contact Secretariat at (916) 653-0429, or CALNET 453-0429, TDD (916) 654-2360.

** The Agenda for the Board can be obtained at the following Internet address:
<http://www.spb.ca.gov/calendar.htm>

4. NEW BUSINESS
(Items may be raised by Board Members for scheduling and discussion at future meetings.)

5. REPORT ON LEGISLATION

9:30 - 10:00

6. HEARING – PSC #04-03
Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

10:00 - 10:15

7. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS
Deliberations to consider matter submitted at prior hearing.
[Government Code Sections 11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

10:15 - 10:45

8. MARYLAND PAGE, CASE NO. 03-3703A
Appeal from five-percent reduction in salary for twelve months
Correctional Officer
Ironwood State Prison – Blythe
Department of Corrections

CLOSED SESSION OF THE STATE PERSONNEL BOARD

10:45 -

9. DELIBERATION ON ADVERSE ACTION, DISCRIMINATION COMPLAINT, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES
Deliberations on matter submitted at prior hearing, on proposed decisions, petitions for rehearing, rejected

decisions, remanded decisions, submitted decisions, and other matters related to cases heard by administrative law judges of the State Personnel Board or by the Board itself. [Government Code Sections 11126 (d), and 18653 (2).]

10. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial. [Government Code Sections 11126 (e)(1), 18653.]

State Personnel Board (SPB) v. Department of Personnel Administration (DPA)/ International Union of Operating Engineers (IUOE et al. Sacramento County Superior Court Case No. 01CS00109

Association of California State Attorneys and Administrative Law Judges v. DPA/California Department of Forestry Employees Association (ASKA) CDF Firefighters Court of Appeal, Third district No. C034943
Sacramento County Superior Court No. 99CS03314)

IUOE v. SPB/Public Employee Relations Board (PERB)
Unfair Practice Case No. SA-CE-1295-S

Connerly v. SPB

11. RECOMMENDATIONS TO THE LEGISLATURE
Deliberations on recommendations to the Legislature.
[Government Code Section 18653.]

12. RECOMMENDATIONS TO THE GOVERNOR
Deliberations on recommendations to the Governor.
[Government Code Section 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

On Adjournment:

13. DISCUSSION OF COMING BOARD MEETING SCHEDULE
OF SEPTEMBER 1-2, 2004, IN LOS ANGELES, CA

BOARD ACTIONS

14. ADOPTION OF THE STATE PERSONNEL BOARD
SUMMARY MINUTES OF JULY 20, 2004
15. ACTION ON SUBMITTED ITEMS
(See Agenda Page 21)
These items have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting. This list does not include evidentiary cases, as those cases are listed separately by category on this agenda under Evidentiary Cases.
16. EVIDENTIARY CASES
The Board Administrative Law Judges conducts Evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.
 - A. BOARD CASES SUBMITTED
These cases have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting.

ANDREW CIRNER, CASE NO. 03-2241EA
Appeal from denial of request for
reasonable accommodation
Senior Psychiatric Technician
Department of Mental Health

RICHARD COELHO, CASE NO. 02-1796R
Appeal from constructive medical termination
Fish and Game Warden
Department of Fish and Game

SHANNON FROEMING, CASE NO. 03-2871EA
Appeal from denial of request for reasonable
accommodation
Employment Program Representative
Employment Development Department

RONALD GALI, CASE NO. 03-0462A
Appeal from dismissal
Native American Spiritual leader
California State Prison – Folsom
Department of Corrections

ELIZABETH HERRERA, CASE NO. 03-2220A
Appeal from medical termination
Administrative Support coordinator I
California State University - San Jose

PAUL H. KEMP, Case No. 01-2841
Appeal from dismissal
Teacher Assistant - Youth Correctional
Reception Center and Clinic - Sacramento
Department of the Youth Authority

JENNIFER KILL, CASE NO. 02-2164B
Appeal for determination of back salary,
benefits and interest
Supervising Cook
California Correctional Institution - Tehachapi

RAY MARTINEZ, CASE NO. 03-3344
Appeal from dismissal
Correctional Officer
Substance Abuse Treatment Facility – Corcoran
Department of Corrections

MARGARET A. MEJIA, CASE NO. 03-1848
Appeal from dismissal
Psychiatric Technician (Safety)
Department of Mental Health

CHRISTOPHER MIRAMONTES, CASE NO. 03-2299
Appeal from five-percent reduction in
salary for six months
Special Agent
Department of Corrections

ALICE VAN-THU, CASE NO. 03-0413
Appeal from automatic resignation
Administrative Support Coordinator I
California State University

BEVERLY WILSON, CASE NO. 03-1150A
Appeal from dismissal
Administrative Support Assistant II
California State University

B. CASES PENDING

- Oral Arguments

These cases are on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

MARYLAND PAGE, CASE NO. 03-3703A
Appeal from five-percent reduction
In salary for twelve months
Correctional Officer
California State Prison – Blythe
Department of Corrections

C. CHIEF COUNSEL RESOLUTIONS

- Court Remands

These cases have been remanded to the Board by the court for further Board action.

NONE

- Stipulations

These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

NONE

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

- Proposed Decisions

These are ALJ proposed decisions submitted to the Board for the first time.

LUIS AVINA, CASE NO. 04-0273
Appeal from demotion
Painter
California State University - Fresno

DENISE BARBERI, CASE NO. 03-3824
Appeal from dismissal
Caltrans Equipment Operator II
Department of Transportation

JAMES BUGERA, CASE NO. 04-0905
Appeal from dismissal
Transportation Engineer (Civil)
Department of Transportation

CALVIN CAMPBELL III, CASE NO. 03-0626
Appeal from 45-working-days suspension
Correctional Lieutenant
California State Prison - Lancaster
Department of Corrections

BEATRICE DELEON, CASE NO. 03-2903
Appeal from 30-working-days suspension
Motor Vehicle Field Representative, Range C
Department of Motor Vehicles

ANDREW DRAL, CASE NO. 04-0851
Appeal from five-working-days suspension
Investment Officer II, Retirement Systems
California Public
Retirement System
(CalPERS)

GEOFFREY DYER, CASE NO. 04-0645
Appeal from a five-percent reduction
in salary for three months
Senior Hydroelectric Plant Operator
Department of Water Resources

JOHN ELIZALDE, CASE NO. 04-0299
Appeal from five-percent reduction in
salary for three months
Correctional Officer
California State Prison - Wasco
Department of Corrections

JOHN FLORES, CASE NO. 03-2588E
Appeal of retaliation
Hospital Peace Officer I
Department of Mental Health

DAVID GONZALEZ, CASE NO. 04-1139
Appeal from dismissal
Correctional Officer
California State Prison - Wasco
Department of Corrections

MIKE GUERRERO, CASE NO. 03-3673E
Appeal from denial of discrimination
complaint
Senior Investigator
Department of Consumer Affairs

RICHARD HARMON, CASE NO. 03-3739
Appeal from dismissal
Psychiatric Technician Assistant
Department of Developmental Services

ROYCE HENSON, CASE NO. 02-3501E
Appeal from retaliation complaint
Staff Services Manager II (Supervisor)
Department of Forestry and Fire Protection

KATHRYN KIDD, CASE NO. 04-0395
Appeal from dismissal
Child Support Specialist II
Department of Child Support Services -
Merced

ERROL LEWIS, CASE NO. 04-0082
Appeal from dismissal
Youth Correctional Counselor
Department of the Youth Authority

EDWARD LIMON, CASE NO. 04-0233
Appeal from dismissal
Parole Agent I
Department of the Youth Authority

WENDY MARSHALL, CASE NO. 03-1117E
Appeal from denial of request for reasonable
accommodation
Senior Legal Typist
Unemployment Insurance Appeals Board

LAWRENCE McCARTHY, CASE NO. 04-0874
Appeal from five-work-day suspension
Labor Relations Specialist
Department of Corrections - Sacramento

LEO OORTS, CASE NO. 03-3104
Appeal from dismissal
Network Analyst
California State University - Long Beach

AMY PAPER, CASE NO. 02-3355E
Appeal from discrimination complaint
Correctional Officer
Correctional Training Facility - Soledad
Department of Corrections

JACOB RUIZ, CASE NO. 04-0080
Appeal from two-months suspension
Caltrans Landscape Maintenance Worker
Department of Transportation

RICHARD D. SANDERS, CASE NO. 04-0315
Appeal from official reprimand
Teacher HS-General Education (CF)
California State Prison – Solano
Department of Corrections

BARBARA SCARBROUGH, CASE NO. 04-0720E
Appeal from failure to investigate/timely
investigate complaints
Program Technician
Folsom State Prison - Represa
Department of Corrections

BRUCE WELLS, CASE NO. 02-1954
Appeal from dismissal
Transportation Surveyor
Department of Transportation

- Proposed Decisions Taken Under Submission At Prior Meeting

These are ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

NONE

- Proposed Decisions After Board Remand

NONE

- Proposed Decisions After SPB Arbitration

ANTHONY ODELL, CASE NO. 04-0042
Appeal from two-working-days suspension
Sergeant
California Highway Patrol

E. PETITIONS FOR REHEARING

- ALJ Proposed Decisions Adopted By The Board

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

PHILLIP BROWN, CASE NO. 03-3341
Appeal from dismissal
Janitor
Employment Development Department
Petition for rehearing filed by appellant
to be granted or denied

JOHN CARTIER, CASE NO. 03-1588
Appeal from dismissal
Correctional Officer
High Desert State Prison - Susanville
Department of Corrections
Petition for rehearing filed by appellant
to be granted or denied

GARY CORNWELL, CASE NO. 00-0457
Appeal from dismissal
Officer
California Highway Patrol
Petition for rehearing filed by respondent
to be granted or denied

- Whistleblower Notice of Findings
The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

NONE

F. PENDING BOARD REVIEW

These cases are pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

ANN R. ABIERAS, CASE NO. 04-0531A
Appeal from ten-percent reduction
in salary for twelve months
Psychiatric Technician Assistant
Department of Developmental Services

DONALD ATKINS, CASE NO. 03-1448A
Appeal from five-percent reduction
in salary for six months
Correctional Officer
California State Prison, San Quentin
Department of Corrections at San Quentin

NICHOLAS COMAITES, CASE NO. 03-0062A
Appeal from official reprimand
Correctional Counselor II
Department of Corrections
AND

PAUL WARD, CASE NO. 03-0332A
Appeal from official reprimand
Correctional Administrator
Department of Corrections

EVELYN B. CORPUS, CASE NO. 04-0529A
Appeal from ten-percent reduction in
salary for twelve months
Psychiatric Technician Assistant
Department of Developmental Services

MICHELLE DAWKINS, CASE NO. 03-2755R
Appeal from demotion
Fiscal Services Supervisor to Typist Clerk III
Human Services Agency, Merced County

DEBRA GREENE, CASE NO. 03-0621A
Appeal from dismissal
Motor Vehicle Field Representative
Department of Motor Vehicles

MARTIN HERNANDEZ, CASE NO. 02-4449A
Appeal from demotion
Correctional Sergeant
Calipatria State Prison – Imperial
Department of Corrections

MARY HUTTNER, CASE NO. 02-1690R
Appeal from demotion
Staff Services Manager I to the
position of Associate Health Program
Advisor (top step)
Department of Health Services

CONNIE JAMES, CASE NO. 03-3136A
Appeal from 15-working days' suspension
Accounting Technician
Employment Development Department

CONNIE JOHNSON, CASE NO. 03-2620A
Appeal from 30-calendar-days suspension
Employment Program Representative
Employment Development Department

HUGO LANDEROS, CASE NO. 03-3190A
Appeal from dismissal
Employment Program Representative
Employment Development Department

JACQUELYN McCARVER, CASE NO. 03-0669A
Appeal from demotion
Correctional Sergeant
Rainbow Conservation Center - Fallbrook
Department of Corrections

LEIJANE OGAWA, CASE NO. 03-2943A
Appeal from discrimination
Office Assistant (General)
Department of Transportation

MARYLAND PAGE, CASE NO. 03-3703A
Appeal from five-percent reduction in
salary for twelve-months
Correctional Officer
Ironwood State Prison - Blythe
Department of Corrections

VIRGINIA PARKER, CASE NO. 03-0325A
Appeal from demotion
Correctional Lieutenant
Ironwood State Prison – Blythe
Department of Corrections

KEVIN REDDINGTON, CASE NOS. 03-2646 &
03-0386R
Appeal from ten-percent reduction in salary
For six pay periods, and dismissal
Office Technician (Typing)
Department of Forestry and Fire Protection

KIM RITTENHOUSE, CASE NOS. 03-3541A &
03-3542A
Appeal from denial of reasonable accommodation
And from constructive medical termination
Office Technician (General)
Department of Fish and Game

PEARLIE BLEDSOE-TOWNES, CASE NO. 03-2966A
Appeal from denial of request for reasonable
Accommodation
Correctional Sergeant
Central California Women's Facility – Chowchilla
Department of Corrections

DENNIS UYEDA, CASE NO. 03-2396A
Appeal from five-working-days suspension
Latent Print Analyst II
Department of Justice

NANCY VALENTINO, Case No. 03-0699R
Appeal from dismissal
Psychiatric Technician
Department of Developmental Services

GARY WHALEY, CASE NO. 03-1420A
Appeal from discrimination
Employment Program Representative
Employment Development Department

17. RESOLUTION EXTENDING TIME UNDER GOVERNMENT
CODE SECTION 18671.1 EXTENSION
(See Agenda Page 23)

18. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

RAUL AREVALO, CASE NO. 03-1383
Classification: Cadet
Department: California Highway Patrol

NORMAN CRAMER, CASE NO. 03-1029
Classification: Correctional Officer
Department: Department of Corrections

LANCE FLORES, CASE NOS. 03-1524 &
03-1525
Classification: Fire Apparatus Engineer and Fire
Fighter II
Department: Forestry and Fire Protection

ANDREW KRESCENT, CASE NO. 03-1566

Classification: Correctional Officer

Department: Department of Corrections

DONALD MACOMBER, CASE NO. 03-3436

Classification: Correctional Officer

Department: Department of Corrections

CHRISTOPHER NYSTOM, CASE NO. 03-3285

Classification: Correctional Officer

Department: Department of Corrections

LINDA PINA, CASE NO. 03-3207

Classification: Correctional Officer

Department: Department of Corrections

NICOLE PROWSE, CASE NO. 03-3115

Classification: Correctional Officer

Department: Department of Corrections

FREDDY RIVERA, CASE NO. 03-2666

Classification: Correctional Officer

Department: Department of Corrections

MOHINDER SOHI, CASE NO. 03-1764

Classification: Accountant Trainee

Department: Department of Fish and Game (DFG)

SEAN UEDA, CASE NO. 03-2845

Classification: Correctional Officer

Department: Department of Corrections

CHRISTINA WILLIAMS, CASE NO. 03-3635

Classification: Correctional Officer

Department: Department of Corrections

(Dismissed Case)

ESMERALDA SALDIVAR, CASE NO. 03-2940

Classification: Correctional Officer

Department: Department of Mental Health

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

Cases heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board will be presented recommendations by a Hearing Panel on each appeal.

AHLIAH COOK, CASE NO. 03-3451

Classification: Correctional Officer

Department: Department of Corrections

LAURA ROLDAN, CASE NO. 03-2077

Classification: Correctional Officer

Department: Department of Corrections

C. EXAMINATION APPEALS - NONE
MINIMUM QUALIFICATIONS - NONE
MERIT ISSUE COMPLAINTS - NONE

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

D. RULE 212 OUT-OF-CLASS APPEALS - NONE
VOIDED APPOINTMENT APPEALS - NONE
RULE 211 APPEALS - NONE

Cases heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board will be presented recommendations by a Staff Hearing Officer for final decision on each appeal.

E. REQUEST TO FILE CHARGES CASES - NONE
PETITIONS FOR REHEARING CASES - NONE

Investigated by Appeals Division staff. The Board will be presented recommendations by Appeals Division staff for final decision on each request.

F. PSYCHOLOGICAL SCREENING CASES

Cases reviewed by Appeals Division staff, but no hearing was held. It is anticipated that the Board will act on these proposals without a hearing.

PATRICIO COTA, CASE NO. 04-0406

Classification: Correctional Officer

Department: Department of Corrections

EFRAIN ORTIZ, CASE NO. 04-0921

Classification: Correctional Officer

Department: Department of Corrections

19. NON-HEARING CALENDAR

The following proposals are made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff. It is anticipated that the Board will act on these proposals without a hearing.

Anyone with concerns or opposition to any of these proposals should submit a written notice to the Executive Officer clearly stating the nature of the concern or opposition. Such notice should explain how the issue in dispute is a merit employment matter within the Board's scope of authority as set forth in the State Civil Service Act (Government Code Section 18500 et seq.) and Article VII, California Constitution. Matters within the Board's scope of authority include, but are not limited to, personnel selection, employee status, discrimination and affirmative action. Matters outside the Board's scope of authority include, but are not limited to, compensation, employee benefits, position allocation, and organization structure. Such notice must be received not later than close of business on the Wednesday before the Board meeting at which the proposal is scheduled. Such notice from an exclusive bargaining representative will not be entertained after this deadline, provided the representative has received advance notice of the classification proposal pursuant to the applicable memorandum of understanding. In investigating matters outlined above, the Executive Officer shall act as the Board's authorized representative and recommend the Board either

act on the proposals as submitted without a hearing or schedule the items for a hearing, including a staff recommendation on resolution of the merit issues in dispute.

NONE

20. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

Staff has approved the following:

The Department of Personnel Administration (DPA) requests to change the minimum qualifications for the Personnel Program Manager (PPM) II classification by adding an additional promotional pattern, which will allow Staff Personnel Program Analysts (SPPA) the opportunity to compete in examinations for the PPM II.

21. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

This section of the Agenda serves to inform interested individuals and departments of proposed and approved CEA position actions.

The first section lists position actions that have been proposed and are currently under consideration.

Any parties having concerns with the merits of a proposed CEA position action should submit their concerns in writing to the Classification and Compensation Division of the Department of Personnel Administration, the Merit Employment and Technical Resources Division of the State Personnel Board, and the department proposing the action.

To assure adequate time to consider objections to a CEA position action, issues should be presented immediately upon receipt of the State Personnel Board Agenda in which the proposed position action is noticed as being under consideration, and generally no later than a week to ten days after its publication.

In cases where a merit issue has been raised regarding a proposed CEA position action and the dispute cannot be resolved, a hearing before the five-member Board may be

scheduled. If no merit issues are raised regarding a proposed CEA position action, and it is approved by the State Personnel Board, the action becomes effective without further action by the Board.

The second section of this portion of the Agenda reports those position actions that have been approved. They are effective as of the date they were approved by the Executive Officer of the State Personnel Board.

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS
CURRENTLY UNDER CONSIDERATION

(1) CHIEF, OFFICE OF POLICY, PROJECT &
PERFORMANCE REVIEW

The Department of Motor proposes to allocate the above position to the CEA category. The Chief, Office of Policy, Project & Performance Review develops and establishes policies and procedures regarding a departmental performance review process that will ensure that the department's significant projects and other major service delivery improvement efforts are handled efficiently and effectively.

(2) LEGISLATIVE DIRECTOR

The Department of Insurance proposes to allocate the above position to the CEA category. The Legislative Director provides policy advice and direction to the Insurance Commissioner, Chief Deputy Commissioner, Chief Deputy Commissioner, Operations and Executive Staff on a wide variety of issues related to the Department's legislative program.

(3) CHIEF, COMPLIANCE OFFICER

The California Public Employees' Retirement System (CalPERS) proposes to allocate the above position to the CEA category. The Chief Compliance Officer acts as primary consultant to the Finance Committee and Executive Management on formulating policies and procedures relating to internal compliance

issues concerning all programs administered by CalPERS.

- (4) ASSISTANT CHIEF DEPUTY DIRECTOR
The Department of Alcoholic Beverage Control proposes to allocate the above position to the CEA category. The Assistant Chief Deputy Director provides policy advice and consultant to the Director on a wide variety of regulatory, legislative, community, and industry issues.

B. EXECUTIVE OFFICER DECISIONS REGARDING
REQUESTS TO ESTABLISH NEW CEA POSITIONS

NONE

22. WRITTEN STAFF REPORT FOR BOARD INFORMATION

23. PRESENTATION OF EMERGENCY ITEMS AS
NECESSARY

ADJOURNMENT

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERELY), ETC. Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).
2. VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES). Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).
3. TELEVISION SPECIALIST (SAFETY)
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003).

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *



1

(Cal 8/12/04)

TO: Members
State Personnel Board

FROM: State Personnel Board - Legislative Office

SUBJECT: LEGISLATION

The status of major legislation being followed for impact on Board programs and the general administration of the State Civil Service Merit System is detailed in the attached report.

Any legislative action that takes place after the printing of this report, which requires discussion with the Board, will be covered during the Board meeting.

Please contact me directly should you have any questions or comments regarding this report. I can be reached at (916) 653-0453.

Sherry A. Hicks
Director of Legislation

Attachment

**STATE PERSONNEL BOARD
LEGISLATIVE TRACKING
REPORT
2003-2004 SESSION**

**Status as of
July 27, 2004**



3
ASSEMBLY BILLS
 (Tracking)

BILL/ AUTHOR	BOARD POSITION	SUBJECT	STATUS OF BILL
AB 79 Dutra	NEUTRAL	AB 79 would suspend requirements for state departments and local agencies to prepare and submit various reports to the Legislature or the Governor until January 1, 2008. (This bill was amended on 3/25/04)	Location: Senate Appropriations Committee.
AB 1825 Reyes	DEFER to DFEH	This bill would require employers with 3 or more employees to post, as specified, information concerning the illegality of sexual harassment and the remedies available to victims of sexual harassment and would require employers with 50 or more employees to provide 2 hours of training and education to all supervisory employees within one year of January 1, 2005, unless the employer has provided sexual harassment training and education to employees after January 1, 2004.	Location: Senate Third Reading
AB 1827 Cohn	NEUTRAL	Creates a new exception to both state and local government open meeting laws that would allow state and local government bodies to meet in closed session for the purpose of discussing a confidential final draft audit report from the Bureau of State Audits.	Location: Senate Third Reading
AB 1933 Pacheco	NEUTRAL	This bill would, among other things, extend the time for a public agency to respond to a request for public records from 10 to 20 days.	Location: Senate Third Reading
AB 2275 Dymally	SUPPORT	This bill would repeal those sections of the Government Code that is outdated with the inception of Proposition 209. In addition, it clarifies the responsibilities of State agencies EEO program. (Board sponsored)	Location: Senate Appropriations Committee. (Board-sponsored legislation)

ASSEMBLY BILLS (Tracking)

BILL/ AUTHOR	BOARD POSITION	SUBJECT	STATUS OF BILL
AB 2314 Horton	NEUTRAL	This bill would make the same burden of proof in discipline cases involving managerial employees, as currently exists for non-managerial employees.	Location: Senate Third Reading
AB 2408 Yee	SUPPORT	This bill would require state agencies to fill "newly created" and vacant public contact positions with qualified bilingual staff, where deficiencies have been identified, unless specific criteria are met to qualify for an exemption to this provision. The State Personnel Board (SPB) would be responsible for monitoring state agencies' compliance with these new provisions as part of the biennial language survey review process. If the SPB finds that any state agency has not complied with these provisions, it may issue orders it deems necessary to enforce these provisions of the Act. The bill also requires state agencies to submit a copy of their implementation plan to specified Legislative Budget and Fiscal Committees at the same time it is submitted to the SPB on October 1 st of every even-numbered year.	Location: Assembly
AB 2637	OPPOSE UNLESS AMENDED	This bill would enact the Reporting by California State University Employees of Improper Governmental Activities Act, and would establish procedures for the investigation and determination of whistleblower retaliation complaints filed by California State University (CSU) employees with the State Personnel Board (SPB), similar to those currently included in a provision of the California Whistleblower Protection Act (WPA) (Government Code section 8547 <i>et seq.</i>)	Location: Senate Appropriations Committee

ASSEMBLY BILLS (Tracking)

BILL/ AUTHOR	BOARD POSITION	SUBJECT	STATUS OF BILL
AB 2889 Laird	NEUTRAL	This bill would make employers responsible for the acts of non-employees with respect to all forms of harassment in the workplace where the employer or its agents or supervisors knew or should have known of the conduct and failed to take immediate and appropriate corrective action.	Location: Senate Appropriations Committee
AB 2900 Laird	SUPPORT	This bill would amend various provisions of existing laws that prohibit discrimination in employment on different bases, including race, color sex, religion, or marital status, to instead prohibit discrimination in employment on the same bases set forth in the Fair Employment and Housing Act (i.e., race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation). This bill would also make technical, non-substantive changes to those existing provisions.	Location: Senate Appropriations Committee

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SENATE BILLS
(Tracking)

BILL/ AUTHOR	BOARD POSITION	SUBJECT	STATUS OF BILL
SB 9 MCCLIN- TOCK	NO POSITION	Government Code relating to State employees' retirement.	Location: Amended (deals with safety employees) and moved to third reading file. DEAD.
SB 1342 SPEIER/ ROMERO	NEUTRAL	Among other things, this bill would provide a mechanism for greater cooperation and less duplication of effort between the OIG and the State Personnel Board (SPB) when those entities are conducting whistleblower retaliation investigations.	Location: Assembly Appropriations Committee
SB 1431 SPEIER		This bill would require the Director of the Department of Corrections and the Director of the Youth Authority to: (1) provide for the development and implementation of a disciplinary matrix with offenses and associated punishments, that would apply to all employees of the respective department and would be consistent statewide; (2) adopt a code of conduct that clearly states an employee's responsibility to report employee misconduct and to cooperate in any law enforcement investigation; and (3) develop a program to ensure the protection of employees who have reported improper conduct and who need counseling and personal protection.	Location: Assembly Third Reading
SB 1819 Ashburn	NEUTRAL	This bill would allow the disclosure of records and information, under specified conditions, of a person with developmental disabilities to a state civil service employee against whom an adverse action has been filed, when necessary for the employee to defend against the adverse action.	Location: Assembly Appropriations Committee

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**SENATE BILLS
(Tracking)**

BILL/ AUTHOR	BOARD POSITION	SUBJECT	STATUS OF BILL
SB 1892 Burton		This bill amends existing law to provide state employee unions with prior notice of certain proposed personal services contracts between state agencies and private contractors, and an opportunity to ask the State Personnel Board (SPB) to review and approve those contracts before any state funds may be expended.	Location: Assembly Appropriations Committee (SUSPENSE FILE)



MEMORANDUM

DATE: July 20, 2004

TO: Members of the State Personnel Board

FROM: Alvin Gittisriboongul, Staff Counsel
State Personnel Board

REVIEWED: Bruce Monfross, Staff Counsel
State Personnel Board

SUBJECT: PSC No. 04-03: Appeal of the California State Employees Association from the Executive Officer's April 15, 2004 Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief.

REASON FOR HEARING

The California State Employees Association (CSEA) has appealed to the State Personnel Board (SPB or Board) from the Interim Executive Officer's decision dated April 15, 2004 approving the master contracts (contracts) between the California Department of Corrections (CDC) and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief (collectively, the Contractors.) (A copy of the Interim Executive Officer's decision is attached hereto as Attachment 1.)

BACKGROUND

The Contracts are for placement of "temporary/relief pharmacy technicians" at CDC institutions. CDC contends that the federal court in the on-going federal litigation of Coleman v. Davis and Plata v. Davis has found that CDC violated the constitutional

rights of inmates in failing to provide adequate medical and mental health care. From these cases, CDC has been given strict mandates as to the level and types of medical services that must be provided to the inmates. CDC contends that although it has exercised its best efforts at recruiting and retaining pharmacy technicians and has been successful to a certain degree, the circumstances nonetheless require that CDC enter into these contracts to ensure continuity in inmates' medical care as required by the U.S. Constitution. CSEA contends that the federal cases started in 1995 and CDC has known since that time of its obligation to maintain adequate staff to provide the necessary medical services called for by the federal court. CSEA contends that contrary to CDC's representation that it only uses contractors on an as-needed or temporary basis, CDC is actually using contractors to address a chronic, long-term problem of understaffing.

PROCEDURAL HISTORY

CSEA submitted a letter dated September 17, 2003 requesting that the SPB review whether the personal service contracts entered into by CDC for pharmacy technicians comply with the requirements of Government Code § 19130.

On November 19, 2003, CDC submitted its response.

On December 22, 2003, CSEA submitted its reply.

On April 15, 2004, the Interim Executive Officer issued her decision finding that the contracts are authorized under Government Code § 19130(b)(10). (Attachment 1)

APPEAL BRIEFS

On May 12, 2004, CSEA appealed to the Board from the Interim Executive Officer's decision.

CSEA filed its opening brief dated June 11, 2004 and submitted a corrected brief (typographical changes only) on June 14, 2004. (Attachment 2 – Corrected Brief)

CDC filed its response dated July 7, 2004. (Attachment 3)

CSEA filed its reply brief dated July 16, 2004. (Attachment 4)

ISSUE

Are the contracts justified under Government Code § 19130(b)?

SUMMARY OF POSITIONS

The parties' full arguments on this issue are contained in the Attachments and the Board's file. Set forth below is a summary of their arguments.

SPB's Jurisdiction

Government Code § 19132 provides:

The State Personnel Board, at the request of an employee organization that represents state employees, shall review the adequacy of any proposed or executed contract which is of a type enumerated in subdivision (b) of Section 19130. The review shall be conducted in accordance with subdivision (c) of Section 10337 of the Public Contract Code.

Government Code § 19130(b)(10) authorizes a state agency to enter into a personal services contract with a private contractor when:

The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

CSEA's Position

As the representative employee organization for pharmacy technicians employed by CDC, CSEA asserts that CDC has actively reduced the number of pharmacy technicians from the department, while simultaneously relying more on personal service contracts with outside entities for the same work. CSEA further contends that CDC has not taken the necessary steps at recruiting and retaining qualified pharmacy technicians nor has it offered sufficient incentives (improved retirement benefits or bonuses) for recruitment and retention purposes to ensure that inmates' medical needs are met notwithstanding the longstanding shortage of pharmacy technicians.

CSEA contends that in order to contract for civil service work under Government Code § 19130(b)(10), the agency has the burden to show that the services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose. In this case, CSEA asserts that the need for pharmacy technician is not a sudden and unexpected event. In particular, CSEA asserts that CDC has been well aware of its constitutional requirement to provide adequate medical services to its inmates since 1995 when the federal court found CDC's services to be inadequate. Accordingly, CSEA contends that in light of this longstanding well-known shortage of pharmacy technicians, CDC may not credibly

argue that its' continued and persistent use of contractors qualify as temporary, occasional or urgent.

Moreover, CSEA argues that CDC's contention that its contracts with the vendors are necessary to ensure that there will always be pharmacy technicians available to cover the temporary and occasional absences of the full-time technicians employed by CDC is nonsensical. CSEA contends that CDC should hire a sufficient number of pharmacy technicians including limited-term and intermittent civil servants to ensure continuous coverage even when some of the technicians are absent for any particular reason. In support of this argument, CSEA analogizes to CDC's large contingent of correctional officers where the institution may always count on having enough officers to cover any scheduled or unforeseen absences. CSEA further contends that instead of allocating over \$550 million for pharmacy technicians contractors, the amount should be allocated for recruitment, retention and hiring.

Finally, CSEA argues that CDC's proposition that it only uses the contractors on a temporary or occasional basis is untrue. CSEA relies on an un-dated declaration by a civil servant pharmacy technician who declared that she has been working alongside two contract pharmacy technicians that have continuously been at Corcoran State Prison since as early as May 2003.

CDC's Position

CDC asserts that the Interim Executive Officer's decision is correct and should be sustained. CDC contends that CSEA's argument that CDC failed to offer sufficient incentives to recruit and/or retain pharmacy technicians is improper as CSEA failed to raise this argument when it first requested the SPB to review the contracts. Moreover, CDC contends that facts concerning financial incentives for recruiting and/or retaining technicians are irrelevant to a determination under Government Code § 19130(b), where costs saving factors are not part of the consideration. Finally, CDC asserts that it has exercised its best efforts at recruiting pharmacy technicians and, at one point, reduced the number of vacancies to only one position.

CDC contends that the subject contracts fall squarely within the requirements of Government Code § 19130(b)(10) where the services required are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose. CDC asserts that the urgent need for staff varies day-to-day and institution-by-institution. When absences or vacancies occur for anticipated or unforeseen reasons, CDC must be ready to immediately fill that position to ensure that the inmates' medical needs are satisfied without any interruption.

CDC asserts that while it would prefer to utilize civil servant pharmacy technicians and has made a concerted effort to recruit qualified technicians, there are still many occasions where it is necessary to utilize contractors for short periods.

Executive Officer's Decision

In her April 15, 2004 decision, the Interim Executive Officer found that CDC's contracts with the vendors are authorized under Government Code § 19130(b)(10) for the following reasons:

1. Without sufficient pharmacy technicians, CDC's ability to meet the courts' mandates and to timely and appropriately fill prescriptions needed by inmates would be seriously jeopardized. Despite its reasonable efforts, CDC has not been able to recruit sufficient civil service pharmacy technicians to prepare new and renewed prescriptions under the direction of pharmacists, maintain medication and supply inventory and inventory records, input data into databases (including patient medication profiles), and assist in the operation of the facilities' pharmacies. Until such time that CDC is able to maintain an adequate level of civil service pharmacy technicians, it will have to continue relying upon the contracts to fill temporary vacancies, substitute for full-time institution pharmacy technicians on long-term sick leave, and provide temporary services when the work load is exceptionally high and exceeds what the civil servants can reasonably accomplish.
2. The Interim Executive Officer concluded that the information submitted by CSEA of two contract technicians having continuously worked at Corcoran State Prison for at least six months does not automatically demonstrate that CDC's overall need for contract technicians is not temporary, occasional or urgent.
3. The Interim Executive Officer was satisfied with CDC's showing of its efforts at recruiting and retaining pharmacy technicians and thereby concluded that CDC's continued reliance on contract technicians is not motivated by a desire to replace civil servants. Rather, it is motivated by the inmates' immediate needs.

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**ATTACHMENTS FOR THE
HEARING ITEMS ARE
AVAILABLE UPON REQUEST
BY CONTACTING THE
SECRETARIAT OFFICE AT:
(916) 653-0429 OR TDD
(916) 654-2360**